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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

UNITED STATES OF AMERICA, *Petitioner*

v.

ACME PROCESS EQUIPMENT COMPANY

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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OPINIONS BELOW

The opinion of the Court of Claims [App., pp. 1-42] is reported at 347 F. 2d 509. The findings of the Court of Claims [App., pp. 42-144] are unreported.

JURISDICTION

The opinion and order of the Court of Claims were entered on June 11, 1965. A timely motion for reconsideration was denied on October 15, 1965. By orders of the Chief Justice and Mr. Justice Brennan, entered

on January 12, 1966, and February 9, 1966, the time for filing a petition for a writ of certiorari was extended to and including March 14, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTIONS PRESENTED

1. Whether, under the facts of this case and applicable legal precedent, the contractor is entitled to restitution for the reasonable expenses it incurred in performing the contract which was breached by the government.

2. Whether the discovery of violations of the Anti-Kickback Act between subcontractors and employees of a prime government contractor is, under the facts of this case and under applicable law, a valid ground for a forfeiture of the prime contract.

STATUTES INVOLVED

The Tucker Act, 62 Stat. 940, as amended, 28 U.S.C. 1491, provides in relevant part:

> The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

The Anti-Kickback Act, 60 Stat. 37, as amended, 41 U.S.C. 51, provides in relevant part:

> The payment of any fee, commission, or compensation of any kind or the granting of any gift or gratuity of any kind, either directly or indirectly, by or on behalf of a subcontractor, * * * (1) to any

officer, partner, employee, or agent of a prime contractor holding a negotiated contract entered into by any department, agency, or establishment of the United States for the furnishing of supplies, materials, equipment or services of any kind whatsoever; * * * is prohibited. The amount of any such fee, commission, or compensation or the cost of expense of any such gratuity or gift, whether heretofore or hereafter paid or incurred by the subcontractor, shall not be charged, either directly or indirectly, as a part of the contract price charged by the subcontractor to the prime contractor * * *. The amount of any such fee, cost, or expense shall be recoverable on behalf of the United States from the subcontractor or the recipient thereof by setoff of moneys otherwise going to the subcontractor either directly by the United States, or by a prime contractor under any contract or by an action in an appropriate court of the United States. Upon a showing that a subcontractor paid fees, commissions, or compensation or granted gifts or gratuities to an officer, partner, employee, or agent of a prime contractor * * * in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the cost of such expense was included in the price of the subcontract or order and ultimately borne by the United States. Upon the direction of the contracting department or agency or of the General Accounting Office, the prime contractor shall withhold from sums otherwise due a subcontractor any amount reported to have been found to have been paid by a subcontractor as a fee, commission, or compensation or as a gift or gratuity to an officer, partner, employee, or agent of the prime cotnractor or another higher tier subcontractor.

STATEMENT

1. *The Contract.* Until 1952, the business of respondent Acme Process Equipment Company consisted principally of the manufacture of equipment for the distillery, brewery, and sugar industries. In 1952, it became interested in obtaining government contracts in order to offset unevenness in its commercial business, but at such time respondent had no one on its payroll with background and experience in the field of government procurement [F. 2; App., pp. 42, 43].

In October 1952, respondent hired Harry K. Tucker, Jr. and James Norris to manage a separate division to be set up by Acme to handle government contracts in the metals field. Norris was made general manager of production with authority to submit bids, sign government contracts, and award subcontracts; Tucker was put in charge of sales, government contracts, and expediting and coordinating subcontracts [F. 3, 16; App. pp. 43, 55].

On October 23, 1952, Acme submitted a bid to the Army Ordnance Corps for a contract for the manufacture of .75-mm recoilless rifles. Acme's bid price was $337.31 per rifle (later corrected to $337.23). The four other bids submitted by competitive bidders were at unit prices of $484.05, $930.16, $423.00 and $684.00, respectively [F. 45; App., p. 45]. Acme was therefore the low bidder and on January 27, 1953, it was awarded a contract for 2,322 .75-mm recoilless rifles at a unit price of $337.23 per rifle, subject to an upward price revision with a ceiling price of $369.20 per rifle [F. 7, 13, 51, 52; App., pp. 45, 50, 115, 116].

Prior to the award of the prime contract and unbeknown to Acme, Tucker had entered into a contract

with All Metals Industries, Inc., under which he was to receive a commission on sales procured by him for that company. Upon the award of the prime contract to Acme, Tucker secured for All Metals a subcontract from Acme to manufacture chambers and vent assemblies for the .75-mm recoilless rifles [F. 18, 19; App., pp. 56-58].

Subsequent to the award of All Metals' subcontract, Tucker and Jack Epstein (then superintendent of Acme's plant in Oreland, Pennsylvania, and son of its president Joshua Epstein) threatened to cancel All Metals' subcontract unless the subcontractor paid $25,000 to Jack Epstein. As an alternative, an arrangement was made whereby All Metals agreed to pay $23,500 to a dummy corporation owned by Tucker, Norris, and Jack Epstein for consulting engineering services. To cover the amount extorted from All Metals, the subcontractor increased its unit price to Acme for vent assemblies by $10.00. A total of $12,000 was paid by All Metals to Gunn Engineering Company, the dummy corporation referred to above, for services which were never rendered [F. 20; App., p. 58]. Acme had no information until the late summer and fall of 1953 which would lead it to suspect that Tucker, Norris, and Jack Epstein had made illegal arrangements or that it was being victimized by them, and it was not until around the time of the cancellation of Acme's contract in August 1954 that it obtained specific knowledge of the illegal arrangements [F. 20, 30; App., pp. 58, 59, 65].

In addition to the secret arrangements which Tucker had with All Metals, similar arrangements were made

by Tucker with two other companies, both of which were subsequently awarded subcontracts by Acme. None of the officials of Acme (with the exception of Tucker, Norris, and Jack Epstein) were aware of these arrangements until after the cancellation of Acme's prime contract [F. 22, 23; App., pp. 61-63]. A fourth company was awarded subcontracts by Acme after having hired Tucker's father partially on a commission basis, and another company received a subcontract from Acme after having entered into a clandestine agreement to pay commissions to Philip Chagnon on business obtained by him. Chagnon had been previously hired by Norris as his assistant in Acme's plant. None of Acme's responsible officials were aware of the secret arrangement involving Tucker's father or Chagnon [F. 24, 25; App., pp. 63, 64].

Norris was discharged by Acme in September, 1958, after it was discovered that he had charged expenses incurred in connection with work on his farm against Acme's prime contract [F. 26; App., p. 64]. By the end of November, 1958, the employment of both Tucker and Chagnon had been terminated [F. 27, 28; App., p. 65]. On August 28, 1954, Jack Epstein resigned from Acme [F. 29; App., p. 65].

Tucker, Norris, and Jack Epstein were subsequently indicted for violation of the Anti-Kickback Act, 60 Stat. 37 [F. 31; App., p. 65]. After presentation of the government's case, the defendants' motion for acquittal was granted on the ground that the Act at that time did not apply to a fixed price contract with a provision for price redetermination subject to a ceiling

price [F. 54(j); App., p. 128].[1] The District Court remarked that

> "It may well be that Congress thought that in this type of contract the employer would be the one that would protect the interests of the United States, but no employer can protect himself against treacherous employees who are determined to commit morally reprehensible acts and who for the sake of a few paltry dollars, set up the type of vicious scheme that has been set up in this case, which resulted in increased cost both to the employer and to the United States."

The District Court further said that "This case clearly showed that the employer was victimized, and I would say indirectly the United States was also, but the defendants were narrowly within the law." [F. 31; App., p. 66]. As a result of the District Court's decision, amendatory legislation was recommended (H. Rep. 1880, S. Rep. 1585, 86th Cong. 2d Sess.) and the Act was amended in 1960 to apply to all negotiated contracts (74 Stat. 740; 41 U.S.C. 51).

On August 18, 1954, after Acme had delivered 1163 rifles, the Army Ordnance Corps notified respondent that its contact was cancelled for unspecified "statutory violations" [F. 47; App., p. 111]. The circumstances surrounding the cancellation of Acme's contract are set forth in the findings of fact of the Court of Claims [F. 47-50, 54-55; App., pp. 111-115, 121-131].

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[1] The District Court's decision is not contrary to the decision of the Court of Appeals for the Tenth Circuit in *United States* v. *Barnard*, 255 F. 2d 583 (C.A. 10, 1958), *certiorari* denied, 358 U.S. 919 (1958), for the reason that in *Barnard* the contract had "no limitation * * * upon the range of redetermination or revision of prices, upward or downward."

2. *Proceedings Below.* On July 26, 1957, after nearly three years of fruitless but almost successful efforts by Acme to obtain an administrative settlement, stopped only by the intransigence of the Army Ordnance Corps in opposition to advice from other agencies, Acme filed this action in which it sought restitution of its unreimbursed costs of performance or, as an alternative, damages for breach of contract [F. 54, 55; App., pp. 1, 2, 121-131]. The government's major defense to the action was that Acme was entitled to no recovery because it violated certain statutes and covenants (concerning contingent fees, kickbacks, false claims, and conflicts of interest). The Court of Claims, in a 42-page opinion rendered June 11, 1965, unanimously rejected all of the government's defenses and found that the cancellation of Acme's prime contract was unjustified and the government had breached the contract when it was cancelled [App., pp. 1-42].

Insofar as the government's contention that it was entitled to cancel the contract for violations of the Anti-Kickback Act was concerned, the Court of Claims first expressed the opinion that "it is highly doubtful that there was any preexisting right of the Government to cancel the entire contract of a prime contractor, whose agents received improper kickbacks of which he was unaware." The court then went on to state that since Congress in enacting the 1946 Act gave the government only one civil remedy—recovery of the kickbacks—the government had no right to annul the contract [App., pp. 12, 13].

The court below also expressed grave doubts as to whether the 1946 Act was applicable to the contract in question. Citing *Muschany* v. *United States,* 324 U.S. 49, 66-67 (1945), the court said that if the 1946 Act

was inapplicable the improper actions could hardly have contravened any recognized federal public policy. Of particular importance, the court said that

> "When Acme's agents received kickbacks about which plaintiff had no knowledge, it can scarcely be said that *plaintiff* (as distinguished from the agents) violated 'obvious ethical or moral standards,' and that its contract with the defendant could therefore be cancelled on that ground." [App., p. 14]

The decision of the Court of Appeals for the Tenth Circuit in *United States* v. *Barnard,* 225 F. 2d 583 (C.A. 10, 1958), *certiorari* denied, 358 U.S. 919 (1958), was said by the court to be distinguishable because the contract in *Barnard* had "no limitation * * * upon the range of redetermination or revision of prices, upward or downward," as opposed to Acme's contract which contained a ceiling price [App., pp. 14, 15].

The government's contention that the case was governed by the *Dixon-Yates* case (*United States* v. *Mississippi Valley Generating Co.,* 364 U.S. 520 (1961)) was rejected by the Court of Claims. The court first pointed out that the statutory provision violated in *Dixon-Yates* was clearly on the books at the time of the misconduct while the court found it "highly questionable" whether the 1946 Anti-Kickback Act applied to Acme's contract. The Court of Claims then went on to say that the cases were different because the statute in *Dixon-Yates* provided for no more than a criminal sanction, whereas Congress in the Anti-Kickback Act specifically provided for a civil remedy. Most significantly, the Court of Claims said that the violation in *Dixon-Yates* affected the validity of the entire transaction since it related to the negotiation and

award of the contract to a not-altogether-innocent contractor. On the other hand, in the instant case, the kickbacks were not related to the negotiation and execution of Acme's contract with the government but were separate transactions involving the subcontractors and were made after the award of the contract to Acme by the government without Acme's knowledge, actual or implied [App., p. 15]. The court below also noted that the wrongdoings of Tucker and his co-conspirators could not be imputed to Acme since Acme "was being swindled by its own agents" [App., p. 11, fn. 12].

With reference to the appropriate measure of damages to be awarded Acme for the government's breach of contract, the Court of Claims held that Acme was entitled to restitutionary relief for the government's breach of its express contract. In so holding, the court acknowledged the fact that restitution has long been recognized as merely an alternative remedy for a breach of contract by the commentators and by both the federal and state courts. Since contracts with the government have been held to be governed by the same principles as "those between man and man," the court below said that it was, consequently, obliged to award restitution to Acme unless this form of recovery was precluded by the Tucker Act, 28 U.S.C. 1491. Acme's claim for restitution was held by the court below to be within the ambit of the Tucker Act because such claim was founded upon an express contract within the meaning of that Act [App., pp. 25-27].

Having established Acme's entitlement to restitution, the court went on to hold that recovery was not limited to the value of the goods actually received by the government but could be based on the reasonable value of Acme's entire performance. The reasonable

value of Acme's performance, said the Court of Claims, is most accurately reflected by the actual costs it incurred in performing its contract unless the government can establish that such costs were excessive [App., pp. 28-30].

The court also held that Acme's recovery must be reduced by any kickbacks it latently paid through payments to its subcontractors so that the government will receive the full statutory relief available to it under the Anti-Kickback Act [App., p. 30].

ARGUMENT I

The Measure of Damages Adopted by the Court of Claims Is in Accordance With Well Established Principles of Contract Law and Is Appropriate Under the Facts of This Case

The position originally advanced by the government and adopted by the trial commissioner in the Court of Claims in this case was that Acme was entitled only to the traditional remedy of damages for breach of an express contract. Relying on *United States* v. *Penn Foundry Mfg. Co.,* 337 U.S. 198 (1949) and *Chain Belt Co.* v. *United States,* 115 F. Supp. 701 (Ct. Cl., 1953), the government argued in the court below that restitution was not available in the absence of proof that all of Acme's costs were attributable to the cancellation of its contract. This argument was rejected by the Court of Claims. In so doing, the court pointed out that the *Penn Foundry* and *Chain Belt* cases dealt only with the disallowance of lost profits as damages when they are too speculative, and since restitution is designed to restore the *status quo ante,* potential profits under the rescinded contract are irrelevant [App., p. 29, fn. 29]. The Court of Claims said further that it was immaterial that under a convenience-termination

(termination for the convenience of the government) Acme's recovery would be limited by its costs and the ceiling price because the instant case involves a breach of contract situation, not a convenience-termination [App., p. 29, fn. 29].

In its petition to this Court, the government, *for the first time,* advances the theory that restitution "runs counter to valid procurement policies adopted by Congress." This theory upon which the government now relies is an entirely new theory. Such a theory was not relied upon by the government in the Court of Claims but is relied upon *for the first time* in the government's petition to this Court. A losing party cannot change its theory on appeal to gain reversal. *Virginia Railway Co.* v. *Mullens,* 271 U.S. 220 (1926); *United States* v. *Shapiro, Inc.,* 202 F. 2d 459 (C.A.D.C., 1953). In any event, the fixed-price policies of the government have no bearing upon the question of damages when the government breaches a contract. When the government, with constitutional authority, makes contracts, "it has rights and incurs responsibilities similar to those of individuals who are parties to such instruments." *Perry* v. *United States,* 294 U.S. 330, 352 (1935). Although the government recognizes that the Restatement of Contracts, on which the Court of Claims relied, "offers some support for the rule adopted by the court" the government claims that the Restatement does not contemplate government contracts containing the standard termination for the convenience of the government clause. It thus urges this Court to adopt a rule for measuring damages where the government is a party to the contract different from that in the case of private individuals [Pet., p. 16, fn. 14. See Pet., p. 14, fn. 12]. But the fact that

the government may have a right to terminate a contract for convenience does not entitle the government to "breach its contract at will, and then escape the penalty for its breach by retroactively invoking a termination for convenience." *Klein* v. *United States,* 285 F. 2d 778, 783, (Ct. Cl., 1961). The convenience termination clause does not limit the government's liability to pay damages for breach of contract where, as in this case, the cancellation is for the contractor's fault and it is thereafter determined the contractor was not at fault. *Klein* v. *United States, supra.* See also *Goldwasser* v. *United States,* 325 F. 2d 722 (Ct. Cl., 1963).

Restitution in the instant case is supported by the opinion of this Court in *United States* v. *Behan,* 110 U.S. 338, 345-356 (1884)[2] to the effect that "The party who voluntarily and wrongfully puts an end to a contract, and prevents the other party from performing it, is estopped from denying that the injured party has not been damaged to the extent of his actual loss and outlay fairly incurred."

The Court of Claims' decision is in accord with the leading authorities in the field of contracts who have said that restitution is merely an alternative remedy for breach of contract. Restatement, *Contracts,* §§ 347-57; 5 Corbin, *Contracts,* §§ 1102-21 (1951); 5

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[2] It should be noted that in *United States* v. *Behan, supra,* this Court allowed a government contractor recovery of his "actual outlay and expense" as damages for breach of contract. The Court recognized that "If the outlay equals or exceeds the amount to be received" under the contract, there can be no recovery for loss of profit, but nevertheless recovery can still be had for all expenses except those shown to be "extravagant and unnecessary for the purpose of carrying out the contract."

Williston, *Contracts*, §§ 1454-85 (rev. ed. 1937). The court also observed that:

> "The applicability of restitution as an alternative remedy is also well-established in both the federal and the state courts. *E.g., Michael Del Balso, Inc.* v. *Carozza*, 136 F. 2d 280 (C.A.D.C. 1943); *United States ex rel. Susi Contracting Co.* v. *Zara Contracting Co.*, 146 F. 2d 606, 610 (C.A. 2, 1944); *Southern Painting Co.* v. *United States ex rel. Silver*, 222 F. 2d 431, 433-34 (C.A. 10, 1955); *Valente* v. *Weinberg*, 80 Conn. 134, 67 Atl. 369 (1907); *Pelletier* v. *Masse*, 49 R.I. 408, 143 Atl. 609 (1928)." [App., p. 26]

The government contends that it is unfair and inequitable to award restitution to Acme in this case. However, the government wishes the Court to judge the fairness of awarding restitution only from its own point of view. From a reading of the government's argument, it appears that its argument is a shallow one, to say the least, for its claim of unfairness is premised upon the sole fact that restitutionary relief may result in the government paying more to Acme in this particular case than it would have had to pay if it had not breached the contract because this contract did not prove to be a profitable one for Acme.[3] However, there is no rule of law which limits restitution to cases where a profitable contract has been breached.

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[3] The Court of Claims found that at least one-third of Acme's production delays in terms of time and cost were caused by the government [F. 43(c); App., p. 104]. It is conceivable, therefore, that, if the government had not terminated Acme's contract, it would have had to pay an amount to Acme substantially in excess of the original contract price to compensate Acme for the increased cost of performance attributable to the actions of the government. It is not therefore necessarily true that restitutional relief in this case will result in the government paying more to Acme than it would have had to pay if it had not breached the contract.

the judiciary to create civil remedies which did not exist under common law.[4]

The Court of Claims properly ruled that although the duplicity of Acme's employees may have given Acme a right to cancel its subcontracts, there was no common law principle under which the government could cancel the prime contract under such circumstances. *Dixon-Yates* did not involve the situation where a prime contractor's employees were also agents of a subcontractor. Instead, that case involved the situation where a government employee was also an agent of a potential subcontractor. The factual and legal situations in the two cases are quite different. Therefore, the decision of the Court of Claims was proper and correct under the facts of the instant case and in no way is in conflict with this Court's decision in the *Dixon-Yates* case.

The Court of Claims expressed great doubt as to the applicability of the Anti-Kickback Act as enacted in 1946 to Acme's contract. *United States* v. *Barnard, supra,* involved a price redetermination contract with no ceiling price as distinguished from Acme's contract, which was subject to a ceiling price. That the *Barnard* case did not resolve the question as to whether the 1946 Act applied to the type of contract involved in the instant case is clearly evident from the legislative history of the 1960 amendment. H. Rep. 1880, 86th

[4] It is interesting to note that when the Comptroller General sent his recommendation to the Congress that the Anti-Kickback Act be amended to apply to all types of negotiated contracts, he noted that before the Act was enacted in 1946, "there was no specific statutory remedy for recovery by the Government of the amount of the kickback, and there was serious doubt as to the adequacy of common law remedies." H. Rep. 1880, 86th Cong., 2d Sess. 1960 (1960 U.S. Code Cong. & Adm. News, p. 3293).

Cong., 2d Sess., 1960. To apply the 1960 amendment retroactively to Acme's contract (which was the very contract which precipitated the 1960 amendment) would be manifestly unfair and inequitable.

CONCLUSION

Respondent respectfully submits that the petition for a writ of certiorari presents no substantial question of such importance to warrant review of the decision of the court below. This litigation has been pending for a period of almost twelve years. All of the issues were thoroughly considered and disposed of by the Court of Claims. Respondent respectfully prays that the writ be denied.

Respectfully submitted,

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When restitution is sought, only those costs which are reasonable are recoverable. The limitation of recovery to reasonable costs insures that the result will be a fair and equitable one. It follows that there is no merit to the contention that awarding restitutional relief is unfair or inequitable simply because the damages may exceed the contract price.

Insofar as fairness is concerned, the Court should consider the facts of this case from Acme's point of view as well as from the government's. Relying upon the government's implied promise that it would do nothing to hinder, delay, or prevent performance of the contract, Acme in good faith incurred actual costs of over one million dollars in performing the contract [F. 60; App., p. 139]. For a period of almost twelve years Acme has been seeking recovery for the government's breach of contract. For almost twelve years the government has resisted payment of Acme's claim by all means available to it and has had the use of moneys rightfully belonging to the plaintiff.

The Court of Claims has decreed that the government shall have an opportunity to show that plaintiff's costs were excessive. Thus, at this juncture, the issue of fairness which the government attempts to interject into the case is not only meritless but it is also premature.

The first question presented by the petition is clearly without merit and involves no special or important reasons for granting a writ of certiorari as provided by Rule 19 of the Rules of this Court.

ARGUMENT II

The Ruling of the Court of Claims That the Discovery of Violations of the Anti-Kickback Act by Employees of Acme Did Not Justify the Government's Cancellation of the Contract Was Correct Under the Facts of This Case

The government contends that the Court of Claims' holding that the violations of the Anti-Kickback Act, 41 U.S.C. 51 *et seq.*, by Acme's employees did not justify a cancellation of the contract limits the scope of this Court's ruling in *United States* v. *Mississippi Valley Generating Co., supra,* commonly referred to as the *Dixon-Yates* case. Respondent submits, however, that the Court of Claims' ruling was proper and in no way dilutes the holding in *Dixon-Yates.*

This Court recognized that the contract in *Dixon-Yates* was "conceived in a tainted transaction" (364 U.S. at 565). However, as the Court of Claims found in Acme's case, "The kickbacks with which we are concerned * * * were in no way related to the negotiation and execution of Contract 1213, and do not affect its validity" [App., p. 15].

Of great significance is the fact that in *Dixon-Yates* the wrongdoings of the contractor's employees were imputable to the contractor. See *Carrier Corp.* v. *United States,* 328 F. 2d 328 (Ct. Cl., 1964). On the other hand, since Acme was "swindled by its own agents" and had nothing to gain from their actions, it cannot be charged with the violations of the act committed by its employees. 3 Fletcher, *Private Corporations,* § 826 (rev. ed. 1947); *Maryland Casualty Co.* v. *Tulsa Industrial Loan & Investment Co.,* 83 F. 2d 14 (C.A. 10, 1936).

Even though Acme was clearly victimized by its employees and even though Acme had no way to protect itself against "treacherous employees who are determined to commit morally reprehensible acts and who, for the sake of a few paltry dollars, set up the type of vicious scheme that has been set up in this case," the government asserts that it had a right to a decree of forfeiture of the entire prime contract. [See F. 30; App., p. 66.]

While the kickbacks could have resulted in increased costs to the government as well as to Acme unless some action were taken, the Court of Claims' decision requires Acme's recovery to be reduced by the amount of any kickbacks latently included in payments to its subcontractors. Therefore, the kickbacks will not cost the government a single cent. The policy expressed by Congress in the Anti-Kickback Act will therefore be fully abided by.

In holding that Congress, by giving the government only one civil remedy against contractors whose agents had received secret kickbacks, precluded the additional remedy of contract annulment, the Court of Claims applied a well-established rule of statutory construction—*inclusio unius est exclusio alterius.* Since Congress provided no civil remedy for a violation of the statute involved in *Dixon-Yates,* the two cases are obviously distinguishable.

Respondent submits that the civil remedy provided by the Anti-Kickback Act is adequate to relieve the taxpayers of the cost of any illegal kickbacks. If such is not the case, then it is submitted that amendatory legislation is required since it is not the function of